

**UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE**

Docket No. 13-0200

In re:

SNOKIST GROWERS,

Respondent.¹

DECISION AND ORDER ON THE RECORD

The instant matter involves a complaint filed by the United States Department of Agriculture (“Complainant”; “USDA”) against Snokist Growers (“Respondent”) alleging violations of the Perishable Agricultural Commodities Act, 1930, as amended, 7 U.S.C. §499a et seq. (“PACA”; “the Act”). The complaint alleged that Respondent failed to make full payment promptly in the aggregate amount of \$696,853.95 to eight (8) growers for 402 lots of perishable agricultural commodities during the period from July, 2011 through September, 2011.

I. PROCEDURAL HISTORY

On March 29, 2013, Complainant filed a Complaint against Respondent alleging violations of the PACA. Respondent filed an Answer with the Hearing Clerk for the Office of Administrative Law Judges (“OALJ”) for USDA (“Hearing Clerk”) on April 16, 2013. By Order issued May 13, 2013, I set deadlines for the exchange of evidence and filing of witness and exhibit lists. Upon the request of the parties, I subsequently suspended action in the proceeding. In a status report filed November 12, 2013, counsel for Complainant advised that the parties were discussing settlement of the matter. On May 14, 2014, Complainant moved for a Decision and Order on the Record by Reason of Admissions. Respondent did not file a response.

¹ The complaints against other parties related to this action were resolved by other means.

This Decision and Order is issued on unopposed motion of Complainant, and incorporates all of the pleadings of the parties and all other evidence of record.

II. FINDINGS OF FACT & CONCLUSIONS OF LAW

A. Discussion

The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes (“Rules of Practice”), set forth at 7 C.F.R. § 1.130 et seq., apply to the adjudication of the instant matter. The Rules allow for a Decision Without Hearing by Reason of Admissions (7 C.F.R. §1.139). In addition, the Secretary has recognized that “a respondent in an administrative proceeding does not have a right to an oral hearing under all circumstances, and an agency may dispense with a hearing when there is no material issue of fact on which a meaningful hearing can be held.” In re H. Schnell & Company, Inc., 57 Agric. Dec. 1722, 1729 (1998).

Respondent’s admissions and documentary evidence establish that there is no material issue of fact requiring a hearing. Additionally, it is uncontested that the outstanding balance due to sellers is in excess of \$5,000.00, which represents more than a de minimis amount. See, In re: Fava & Co., 46 Agric. Dec. 798, 81 (1984); 44 Agric. Dec. 879 (1985). “[U]nless the amount admittedly owed is de minimis, there is no basis for a hearing merely to determine the precise amount owed”. In re: Tri-State Fruit & Vegetable, Inc., 46 Agric. Dec. 81, 82-83 (1984); 46 Agric. Dec. 83 (1985). I find that a hearing is not necessary in this matter, as there is no genuine issue of material fact, and because the amount remaining unpaid to growers exceeds \$5,000.00.

PACA requires payment by a buyer within ten (10) days after the date on which produce is accepted. 7 C.F.R. § 46.2(aa)(5). The regulations allow the use of different payment terms so long as those terms are reduced to writing prior to entering into the transaction. 7 C.F.R. §

46.2(aa)(11). PACA requires “full payment promptly” for produce purchases and where “respondent admits the material allegations in the complaint and makes no assertion that the respondent has achieved or will achieve full compliance with the PACA within 120 days after the complaint is served on that respondent, or the date of the hearing, whichever occurs first, the [matter] will be treated as a no-pay case.” In re: Scamcorp, Inc., d/b/a Goodness Greeness, 57 Agric. Dec. 527, 547 - 549 (1998).

In its Answer to the Complaint, Respondent specifically admitted that it had received pears from the eight growers identified in Appendix A to the Complaint. Respondent further admitted that on December 7, 2011, it had filed a voluntary petition under Chapter 11 of the Bankruptcy code (11 U.S. C. § 101 et seq.), Petition No. 11-05868-FLK11 in the Eastern District of Washington. Respondent admitted that it had filed schedules in support of the petition wherein Respondent admitted to owing amounts to the identified growers that were equal to or in excess of the payment balances identified in Appendix A.

Respondent asserted that it had entered into contracts to pay the growers in a manner different from that required by 7 C.F.R. § 46.2(aa)(5). Respondent filed the bankruptcy petition over a month before the date of the second installment payment was due under the contracts to growers, January 31, 2012.

Respondent admitted that not all of the growers were paid in full through the bankruptcy proceeding. Respondent reached settlement with growers Rivermaid Trading Co., Naumes, Inc., Scully Packing Co. LLC, and David Elliott & Son. Respondent advised that growers who did not file state lien claims were not paid, and identified Adobe Creek Packing Co., Pauli Ranch, and Miles Oswald as growers who did not receive payment. Respondent denied having willfully violated PACA and asserted that its “inability to pay growers in accordance with their contracts

resulted from factors, including Bankruptcy court orders and rules, beyond Snokist's control." See, ¶ 2.13 of Respondent's Answer.

I find that Respondent has admitted to owing growers for produce and further admitted to failing to meet contractual payment obligations². I reject Respondent's contention that its inability to pay was beyond its control, noting that Respondent voluntarily filed a petition in bankruptcy, thereby staying payment obligations. Furthermore, Respondent filed its petition before the date that the contractual payments were due. Respondent admitted that some growers were not paid at all. There has been no contention that unpaid growers have been paid any additional amounts since the Complaint and Answer were filed.

A violation is repeated whenever there is more than one violation of the Act, and is flagrant whenever the total amount due to sellers exceeds \$5,000.00. In re: D.W. Produce, Inc., 53 Agric. Dec. 1672, 1678 (1994). A violation is willful if a person intentionally performs an act prohibited by statute or carelessly disregards the requirements of a statute, irrespective of motive or erroneous advice. Id. at 1678. In the instant matter, Respondent has admitted that produce growers remain unpaid for purchases it made. Respondent's failure to pay sellers promptly for the purchase of products covered by section 2(4) of the PACA is willful, and the violations are repeated and flagrant. See 7 U.S.C. § 499b(4). Therefore, publication of the facts and circumstances of Respondent's violations is an appropriate sanction.

B. Findings of Fact

1. Respondent Snokist Growers is a cooperative formed and existing under the law of the state of Washington, with a business address in Yakima, Washington.

²In its motion for a Decision and Order by Reason of Admissions, Complainant relies upon Respondent's Bankruptcy proceeding and filings therein as an additional admission of culpability. However, Complainant failed to include any of Respondent's bankruptcy documents with the motion, despite alluding to them as attachments. My search of Complainant's submissions, including a DVD, failed to reveal bankruptcy documents.

2. Respondent is not currently operating.
3. At all times material hereto, Respondent was licensed and operated subject to the provisions of the PACA, under license number 1916 3299, issued on March 12, 1956.
4. Respondent's license terminated on March 4, 2008, after Respondent reported to USDA that it was no longer operating subject to PACA.
5. During the period from July 27, 2011, through September 30, 2011, Respondent failed to make full payment promptly of the agreed purchase prices in the aggregate of \$696,853.95 for 402 lots of pears, a perishable agricultural commodity purchased, received, and accepted by Respondent in interstate and foreign commerce from eight (8) growers.
6. The transactions that demonstrate violations of the PACA are described and enumerated in Appendix A of the Complaint filed in this matter, which is incorporated herein by reference.
7. Respondent entered into contracts to pay the growers pursuant to 7 C.F.R. § 46.2(aa)(11).
8. On December 7, 2011, more than a month before payment was due under the contracts, Respondent filed a voluntary petition under Chapter 11 of the Bankruptcy Code, Petition No. 11-05868-FLK11, in the Eastern District of Washington.
9. Through the bankruptcy proceeding, Respondent reached settlement with some of the unpaid growers, but some growers remained unpaid.
10. The unpaid balances represent more than de minimis amounts, thereby obviating a need for a hearing.

C. Conclusions of Law

1. The Secretary has jurisdiction over this matter.

2. Respondent's failure to make full payment promptly of the agreed purchase prices for perishable agricultural commodities purchased, received, and accepted in interstate commerce constitutes willful, flagrant and repeated violations of Section 2(4) of the PACA. (7 U.S.C. § 499b(4)).

ORDER

Respondent Snokist Growers willfully, flagrantly, and repeatedly violated Section 2(4) of the PACA (7 U.S.C. § 499b(4)).

The facts and circumstances underlying Respondent's violations shall be published.

This Order shall take effect on the eleventh (11th) day after this Decision becomes final. Pursuant to the Rules of Practice governing procedures under the Act, this Decision and Order shall become final without further proceedings 35 days after service hereof unless appealed to the Secretary by a party to the proceeding within 30 days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139 and 1.145).

The Hearing Clerk shall serve copies of this Decision and Order upon the parties.

So ORDERED this 20th day of June, 2014, in Washington, D.C.

Janice K. Bullard
Administrative Law Judge